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No. 85-362

Supreme Court, U.S.
FILED
NOV 18 1985
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

STATE OF CALIFORNIA, EX REL., LANDS COMMISSION,

Petitioner,

VS.

UNITED STATES, et al.,

Respondent.

BRIEF OF THE STATES OF ALASKA, CONNECTICUT, FLORIDA, HAWAII, IDAHO, ILLINOIS, IOWA, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, PENNSYLVANIA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, WISCONSIN, AND WYOMING, AND THE TERRITORY OF GUAM AS AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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I
INTRODUCTORY STATEMENT

Pursuant to United States Supreme Court Rule 36.1, the signatory states submit this Brief as *Amici Curiae* in support of the Petition for a Writ of Certiorari in the captioned case. Since this Brief is being sponsored and filed by the aforementioned states, consent to its filing is not required. U.S. Sup. Ct. R. 36.4.

II
OPINIONS BELOW

The Opinion of the Ninth Circuit Court of Appeals is reported at 752 F.2d 393 and is reproduced in Petitioners' Appendix at A-1 through A-7. The prior decision and Judgment of the District Court were not published; they are reproduced in Petitioners' Appendix at A-9 through A-15.

III
INTEREST OF *AMICI CURIAE*

The interest of North Dakota and the other states joining as *Amici* in this Brief centers on the important and far-reaching effects of the Ninth Circuit's decision on the state-federal relationship. The statute in question, the Federal Quiet Title Act, 28 U.S.C. § 2409a, is a federal statute incorporating state substantive law. Several circuits currently differ on how to interpret and apply that law. The number of cases turning upon that interpretation is great and can only be expected to grow. The effect of allowing the issue to go unresolved will be detrimental to the state-federal relationship.

Of paramount importance to North Dakota and other *Amici* is development of an appropriate and workable standard by which the federal government's adverse claim to state sovereign and trust lands must be measured for purposes of Section 2409a(f). Since this Court in *Block v. North Dakota,* 461 U.S. 283 (1983), held that the 12-year statute of limitations period set forth in Section 2409a(f) for quiet title actions against the United States applies to suits by states, it is imperative that this Court require that notice of a federal claim commencing the statutory period be

express, unambiguous, adverse, and directed to the state agency with management responsibilities for the lands at issue. In view of the special nature of state sovereign and trust lands and the commensurate responsibilities to protect and administer them, any lesser form of notice would not provide states with an adequate opportunity to discharge their trust responsibilities.

North Dakota has immediate interest in the controversy presented for review. The Federal District Court's decision on remand in *State of North Dakota v. Block*, No. A78-1092, slip op. at 4 (D.N.D. Sept. 26, 1984) (on remand from U.S. Supreme Court; copy reproduced in Petitioners' Appendix at A-50), *appeal pending*, No. 84-2664 ND (8th Cir.), is currently on appeal to the Eighth Circuit Court of Appeals. In that appeal, the issue of what constitutes notice is raised. The lower court's decision in the North Dakota case directly conflicts with the Ninth Circuit's decision which this Court is now being asked to review.

All states joining as *Amici* in this Brief have a concern with the ultimate interpretation of the notice provisions of Section 2409a and their application. Some are in circuits which have decided similar cases contrary to the Ninth Circuit's decision in question here. The *Amici* states have the potential for title claims against the United States which will be determined, for statute of limitations purposes, by the Court's decision in this case. It is essential that this Court agree to review the instant case so as to provide guidance to the states and the lower courts in this area, and crucial that a standard for notice be developed that preserves the states' abilities to appropriately protect and administer their trust lands.

IV
ARGUMENT

A. Review by This Court Is Required to Resolve a Direct Conflict Between the Decision Below and Those of Other Circuits Interpreting the Accrual Provisions of the Federal Quiet Title Act's Statute of Limitations

The interests of the *Amici* in this case substantially conform to the reasons set forth in the Petition for the granting of certiorari.

First and foremost, the decision to be reviewed directly conflicts with decisions on similar questions in other circuits.

Cases in other circuits which have addressed the question apply state property, title and notice law to determine the meaning of the accrual provisions of Section 2409a. *See Amoco Production Co. v. United States,* 619 F.2d 1383 (10th Cir. 1980); *United States v. Bedford Assoc.,* 657 F.2d 1300, 1316 n.16 (2d Cir. 1981).

In interpreting state law, the circuits have consistently applied a test of reasonableness. In *Amoco,* the Circuit Court held that when state law was inconclusive and ambiguous it was reasonable for the plaintiff not to have constructive notice. In another Tenth Circuit case it was held that the claim must be "so clear that it would have been unreasonable for the Plaintiff to believe otherwise." *Poverty Flats Land & Cattle Company v. United States,* 706 F.2d 1078, 1079 (10th Cir. 1983). A third Tenth Circuit case held that the phrase "should have known" in Section 2409a means a reasonable awareness that the United States claims some interest adverse to the claimants. *Knapp v. United States,* 636 F.2d 279, 283 (10th Cir. 1980).

The question of reasonableness applies equally whether the test is one of actual notice or constructive notice. While most of the cases construe whether or not a plaintiff had constructive notice, the Third Circuit was asked to construe the question of whether or not a plaintiff had actual notice. In so doing, the Circuit Court depended on the reasonableness test. *Deakyne v. Department of Army Corps of Engineers,* 701 F.2d 271 (3d Cir. 1983). In *Deakyne,* the Third Circuit Court of Appeals remanded the case to determine whether the plaintiff had actual knowledge of the federal claim. The lower court was to receive evidence on whether the claimant's lack of actual knowledge was reasonable under the circumstances. 701 F.2d at 276-277. Finally, (in an unreported opinion which is reproduced in the Appendix of the Petitioner's Brief) the District Court for the District of North Dakota employed state law and the test of reasonableness to determine whether the State of North Dakota's claim was time barred by Section 2409a. *State of North Dakota v. Block,* No. A78-1092, slip op. at 4 (D.N.D. Sept. 26, 1984) (on remand from U.S.

Supreme Court; copy reproduced in Petitioners' Appendix at A-50), *appeal pending,* No. 84-2664 ND (8th Cir.). In *North Dakota v. Block,* the District Court held that state law concerning the notice impact of the recording statutes controlled, and that state law is important in determining the meaning of the phrase "should have known" (i.e. whether or not a plaintiff had constructive notice).

In conflict with these holdings is the Ninth Circuit's decision on which a Writ of Certiorari is being requested in the instant case. The Court below specifically decided that the reasonableness test did not apply to the question of whether a state had *actual* knowledge. This directly conflicts with the decision in *Deakyne* of the Third Circuit. The Ninth Circuit did not even consider the question of whether state law should be used to resolve the allegations of Plaintiff California. This directly conflicts with both the Tenth and the Eighth Circuits' decisions.

There is a further discrepancy among circuits concerning the questions of whether the federal government's claim must be adverse to the plaintiffs and whether that claim must be clear and unambiguous. *Poverty Flats,* quoted above, states that the claim must be so clear that it be unreasonable to believe otherwise. 706 F.2d at 1079. *Knapp v. United States,* 636 F.2d 279 (10th Cir. 1980), requires the federal government's claim to be adverse to the plaintiffs, not in cooperation with. The *Knapp* court stated: "all that is necessary is a reasonable awareness that the government claims some interest adverse to the plaintiffs." 636 F.2d at 283. These cases from the Tenth Circuit differ from the holding of the court below and again provide this Court with an example of the discrepancy among the circuits on the issue of Section 2409a.

Allowing the question of the proper interpretation of Section 2409a to go unresolved will have the undesirable effect of encouraging litigation between the states and federal government. As indicated in Petitioners' Brief, the amount of litigation on the accrual question is already significant and there is little likelihood that it will diminish. This Court's guidance for both the states and lower federal courts is necessary for an orderly development of the law.

B. The Decision Below, if Left Unreviewed, Will Discourage Numerous Federal-State Cooperative Programs, Important to Amici States, Which are Expressly Encouraged Under Federal Law

If the Ninth Circuit's decision is allowed to stand, cooperation between the states and the federal government in a host of essential intergovernmental programs will be frustrated. Such programs, which are of vital concern to both the amici states and the United States, are most prominent in the resource management area.

The activities of the California Debris Commission from which the present case arises were a lodestar example of federal-state cooperative efforts. In more recent years, the principle has been expanded to reach a multiplicity of programs which affect all 50 states. Congress has regularly enacted measures requiring joint planning, funding and management for resource projects benefiting both state and federal interests. (See, e.g., Federal Land Policy and Management Act, 90 Stat. 274, 43 U.S.C. § 1701 et seq.; Reclamation Project Authorization Act of 1972, Pub.L. 92-514, 86 Stat. 964.) Federal agencies have embraced and implemented this policy in their own individual programs. (E.g., 33 C.F.R. § 239.8 (1985) (requiring local cost sharing for federally-constructed flood control channels; 33 C.F.R. § 282.10 (1985) (compelling local participation in U.S. Army Corps of Engineers' shoreline, hurricane, tidelands and lake projects).)

Such costly, time-consuming and essential projects will be impaired—perhaps fatally—if a given state's participation will later be considered legal cause for time-barring its action to quiet title to sovereign lands. Such a result, graphically illustrated by the present case, sets the federal policy fostering intergovernmental cooperation at cross purposes with a judicial interpretation of the federal statute of limitations that directly impedes it.

One apt illustration of the cooperative resource management efforts of federal and state officials that are threatened by the Ninth Circuit's decision in this case is provided by amicus State of Alaska. The Alaska National Interest Lands Conservation Act (ANILCA), Pub.L. No. 96-487, 94 Stat. 2371 (codified in

scattered sections of 16 and 43 U.S.C.), provides for state-federal cooperation in the management of Alaska's public lands. For example, § 1201 of ANILCA (16 U.S.C. § 1381) establishes the joint state-federal Alaska Land Use Council with the responsibility for studying and advising state and federal agencies regarding ongoing, planned, and proposed land and resource uses in Alaska. (16 U.S.C. § 1381(i)(1).) Among its functions, the Alaska Land Use Council reviews and makes recommendations on management plans for federal conservation system units created or expanded by ANILCA. (16 U.S.C. § 1381(i)(2)(A)(ii).)

The federal agencies responsible for administering the federal conservation system units created or expanded by ANILCA are currently preparing mangement plans for each of the units within their jurisdiction. That process involves both state and federal agencies. Numerous potential submerged land title disputes have been identified as part of that process, also based upon disputes over navigability for title purposes and over federal claims of "reserved" submerged lands. Generally, however, through the cooperation of state and federal land managers, agreement can be reached on appropriate management principles without resolving the underlying ownership dispute. Thus, expensive and divisive title litigation can be and usually has been avoided.

A specific example of this phenomenon involved the Kenai National Moose Range, created by Presidential Executive Order No. 8979 on December 6, 1941. In 1980, the Moose Range was expanded and renamed the Kenai National Wildlife Refuge by ANILCA. Portions of the Kenai River, which is navigable, flow within the part of the refuge that was included in the prestatehood Moose Range. In 1984, the Alaska State Legislature established the Kenai River Special Management Area, with the specific authorization to enter into cooperative management agreements with the federal government. (AS 41.21.502 — As 41.21.514.) As shown in the exchange of letters attached as appendices A and B to this brief, a potential dispute over ownership of the bed of the Kenai River emerged during the cooperative public planning process. As those letters also reveal, state and federal land managers at the highest levels have striven to cooperate in management decisions regarding the Kenai River, rather than

embark on expensive, time-consuming and possibly unnecessary quiet title litigation over the ownership issue.

These salutory efforts would end if litigation were required to be filed in such cases merely to avoid the bar of the statute of limitations contained in the Quiet Title Act. The decision below poses a serious obstacle to sensible efforts by federal and state officials such as demonstrated in the case of the Kenai National Wildfife Refuge to elevate cooperation over conflict. This Court should take the opportunity to develop an interpretation of the federal statute of limitations' accural provisions consistent with these worthwhile objectives.

CONCLUSION

The interpretation of Section 2409a of the Quiet Title Act is of vital concern to the *Amici* and represents a question with nation-wide impact. Because there are differing interpretations of the law in the courts below and because of the adverse impact of allowing the Ninth Circuit's decision to stand, we respectfully urge this Court to grant the Petition for a Writ of Certiorari in the present case and give plenary consideration to the matter.

Respectfully submitted,

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Appendix A

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES [Letterhead]
Office of the Commissioner

April 26, 1984

Mr. John Sandor
Regional Forester
U.S. Forest Service
P.O. Box 1628
Juneau, AK 99802

Dear Mr. John Sandor:

Governor Sheffield has forwarded your letter regarding the proposed Kenai River management plan to me. Along with the Governor, I am pleased that you support the idea of a comprehensive plan for resolving conflicts over use of this productive and popular area.

One item in your letter causes me some concern. Your letter states that "Skilak Lake in its entirety and that portion of the Kenai River within the Kenai National Wildlife Refuge, including submerged lands, are federally owned and managed by the U.S. Fish and Wildlife Service." In addition, it has come to our attention that other federal agencies have recently started to claim federal ownership and management authority over other submerged lands underlying the river and associated waterbodies. For example, Kenai River mining claims AA51055, AA41518 and AA23118 have been filed with the federal Bureau of Land Management (BLM) and the BLM reports that the land status/filings for these claims are in order.

The State has assumed that these submerged lands passed to Alaska at the time of statehood under the equal footing doctrine, and has been acting accordingly with the knowledge of and without protest by the federal government. Indeed, the State has been administering oil and gas leases covering some of these lands for approximately 20 years.

Third parties should be given notice that there may be a dispute over ownership of the submerged lands whenever an agency purports to grant third-party rights to a portion of the river. In the meantime, despite this apparent ownership question, I hope that we can work for the cooperative development of a Kenai River management plan which will benefit us all.

Sincerely,

/s/ Esther
Esther C. Wunnicke
Commissioner

cc: Governor Bill Sheffield
Vernon Wiggins, ALUC
Tom Koester, Dept. of Law
Neil Johannsen, DOPOR

APPENDIX B

United States Department of the Interior [Letterhead]
Fish and Wildlife Service
1011 E. Tudor Rd.
Anchorage, Alaska 99503
(907) 276-3800

Ms. Estner C. Wunnicke, Commissioner
Alaska Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner Wunnicke:

This responds to your April 26 letter regarding the proposed Kenai River management plan and concerns expressed over the question of ownership of submerged lands and associated waters. My letter to Governor Sheffield concerning the Kenai River management plan was intended to express our support of such a plan with appropriate Federal agency involvement and was not intended to raise serious questions relative to ownership of submerged lands and associated waters.

I am unaware of any pressing need to clarify the ownership question of Skilak Lake and that portion of the Kenai River within the Kenai National Wildlife Refuge. However, I have no question that claims to ownership can be disputed, and when the time is ripe, it may be useful and necessary to our mutual benefit, to resolve the question of ownership of submerged lands and associated waters as it relates to the Kenai along with the other areas of concern raised by other Federal agencies. We will be pleased to pursue this matter at your convenience should you so desire.

Please be assured that the U.S. Fish and Wildlife Service stands ready to work with the appropriate local, State and Federal agencies in the cooperative development of a comprehensive management plan for the Kenai River. I am convinced that only through a close cooperative effort in developing appropriate management and protection measures can the growing conflicts on this most important river be resolved to the benefit of all con-

cerned. The recent meeting hosted by Neil Johannson, Director of the Division of Parks and Outdoor Recreation, was an excellent first start in setting forth the intent and goal of his agency and other State agencies in developing a plan for the Kenai River in cooperation with the Federal agencies.

Please contact us if we can be of further assistance to you on the matters discussed above.

Sincerely,

/s/ Robert E. Putz
Regional Director

cc: DUSFS, COE, EPA
NMFS, ADF&G